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No. 94, Original

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

State of South Carolina,

Plaintiff,

vs.

Donald T. Regan, Secretary of the Treasury of the United States of America,

Defendant.

MOTION FOR PRELIMINARY INJUNCTION, AFFIDAVITS AND MEMORANDUM IN SUPPORT OF MOTION

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No. 94, Original

IN THE
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State of South Carolina,

Plaintiff,

vs.

Donald T. Regan, Secretary of the Treasury of the United States of America,

Defendant.

MOTION FOR PRELIMINARY INJUNCTION

To The Honorable Warren E. Burger, Chief Justice and Justice for the District of Columbia Circuit:

Now comes the plaintiff in the above entitled action and respectfully moves the Court and the Chief Justice to whom this motion is presented that a preliminary injunction be issued directed to the defendant Donald T. Regan, Secretary of the Treasury of the United States of America, and his officers, agents and employees, restraining them from enforcing the provisions of Section 310(b)(1) of Public Law 97-248, the "Tax Equity and Fiscal Responsibility Act of 1982" (the "Act"), scheduled to go into effect on July 1, 1983, until the plaintiff's motion now on file with the Court for leave to file a complaint against the defendant Donald T. Regan, Secretary of the United States Treasury, has been passed upon by the Court and the matters set forth in the complaint determined. In the alternative, the plaintiff prays for such additional decree or order as may be just and proper to preserve the status quo of the right of the State of South Carolina to borrow money for public purposes through the issuance of State bonds in coupon form unimpaired by the provisions of Section 310(b)(1) of the Act.

This motion is based upon the verified complaint

attached to the Motion for Leave to File Complaint and the affidavit attached thereto as well as the affidavits of the Honorable Grady L. Patterson, Jr., Treasurer of the State of South Carolina, the Honorable Harlan E. Boyles, Treasurer of the State of North Carolina, the Honorable Louis L. Goldstein, Comptroller of the State of Maryland, the Honorable William S. James, Treasurer of the State of Maryland, the Honorable William M. Nixon, Auditor of the State of Georgia, the Honorable Anthony J. Solomon, Treasurer of the State of Rhode Island, the Honorable Richard W. Flanders, Treasurer of the State of New Hampshire, and C. W. Houser, all of which affidavits are attached hereto. It is requested pending the ruling of the Court on the Motion for Leave to File Complaint and, should such motion be granted, until such time as the controversy set forth in the complaint is decided and the rights of the parties adjudicated.

T. TRAVIS MEDLOCK
Attorney General

C. TOLBERT GOOLSBY, JR.
Chief Deputy Attorney General

DAVID C. ECKSTROM
Assistant Attorney General

GRADY L. PATTERSON, III
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By: Karen LeCraft Henderson
ATTORNEYS for Plaintiff.

*Counsel of Record.

No. 94, Original

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

State of South Carolina,

Plaintiff,

vs.

Donald T. Regan, Secretary of the Treasury of the United States of America,

Defendant.

AFFIDAVIT OF GRADY L. PATTERSON, JR.

State of South Carolina)
)
County of Richland)

Personally appeared before me, Grady L. Patterson, Jr., who being duly sworn, states:

1. He is the duly elected, qualified and acting Treasurer of the State of South Carolina and as such is responsible for and oversees the issuance of general obligation bonds by the State of South Carolina.

2. He is familiar with the facts in the above-entitled suit and this affidavit is made in support of the plaintiff's motion for the issuance of a preliminary injunction in conjunction with the prayer contained in the complaint heretofore filed herein.

3. The State of South Carolina plans to issue approximately $70 million of general obligation bonds during late July or August, 1983, that is, after July 1, 1983, the effective date of the provisions of Section 310(b)(1) of Public Law 97-248, the Tax Equity and Fiscal Responsibility Act of 1982 ("the Act"), which provisions

require that State obligations must be issued in fully registered form in order that the interest paid thereon by the State to its lenders remain exempt from federal income taxation.

4. The proposed $70 million issue includes State capital improvement obligations incurred in order to finance inter alia penitentiary facilities, facilities for State institutions of higher learning and hospital facilities for the teaching hospital of the Medical University of South Carolina.

5. In order to comply with the registration requirement of Section 310(b)(1) of the Act, the State of South Carolina will have to incur additional initial costs, including registrar's fees, which will be substantially above the costs of issuance if those bonds were issued in coupon form.

6. Owing to the registration requirement of the Act, these additional costs for the proposed $70 million issue are estimated at not less than $100,000 with annual recurring costs estimated at not less than $25,000 for each of the 15 years that the bonds are outstanding; the deponent affirms the statement in his affidavit attached to the complaint that the interest rate will be 25 basis points higher than if the bonds were issued in coupon form, resulting in a burden of approximately $168,000 in additional interest payments during the life of the bonds.

7. Even more significant than the increased costs resulting from compliance with the registration requirement of Section 310(b)(1) of the Act is the fact that this requirement will immediately harm the sovereignty of the State of South Carolina by abridging its inherent sovereign power to borrow money and by violating the constitutional principle of federalism, which is the foundation upon which

the nation rests and which results in the doctrine that neither sovereign may tax the other.

8. Irrespective of the final decision of the United States Supreme Court in this cause, any violation of South Carolina's sovereignty for any period of time imposes an intolerable burden upon the federal system and thus causes irreparable harm to South Carolina, to her sister States and to the national government.

9. Unless preliminarily enjoined by the Court, the defendant Donald T. Regan, Secretary of the United States Treasury, will, upon information and belief, beginning July 1, 1983, enforce and implement the registration requirement imposed by Section 310(b)(1) of the Act.

FURTHER saith the deponent not.

Grady L. Patterson

GRADY L. PATTERSON, JR.

SWORN to and subscribed
before me this 6th day
of May, 1983.

Sandra A. Lee (L.S.)
NOTARY PUBLIC OF SOUTH CAROLINA
My Commission Expires 12/10/90

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

State of South Carolina,
Plaintiff

vs.

Donald T. Regan, Secretary of the Treasury of the United States of America,
Defendant

AFFIDAVIT IN SUPPORT OF SOUTH CAROLINA

State of North Carolina

County of Wake

AFFIDAVIT

I, Harlan E. Boyles, Treasurer of the State of North Carolina, and Chairman of the North Carolina Local Government Commission, do hereby state that the implementation of the provisions of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) will have a substantial negative impact upon the State and its political subdivisions in that:

- North Carolina and its political subdivisions have traditionally issued bearer obligations and the "market" for our debt has been in this type of obligation. Therefore, some premium will be required to attract investors to make the change to unfamiliar "registered" obligations. This is particularly true in light of the fact that traditional bearer obligations will be available in the secondary market for some time to come.

- Extensive changes are being made in our statutes, regulations and procedures in order to attempt to comply with the requirements of a fully registered system. Unfamiliarity with the changes will cause operational inefficiencies for at least a shakedown period. With the vast number of changes and the importance of them to purchasers, as well as issuers, there is cost inefficiency in the short time frame for implementation. An inartfully drawn statute, regulation or procedure can have disasterous results. Fear of such a happenstance will cost us considerably in the marketplace.
- Professional transfer agents will in most cases be required for the State and its political subdivisions to meet the requirements of the "registered" municipal marketplace. The costs of these services are unknown at this time even by the potential providers. Clearly, the costs for the new services provided will make issuing "registered" obligations a more expensive proposition. Also, it appears it will be necessary to appropriate annually an amount to handle these transfer agency costs. With the uncertain level of these costs, the State and the various units of government in our State will face difficult problems in accurately forecasting the "true" cost of their debt obligations.
- Until systems of transfer for these "registered" obligations have been fully implemented, there may be delays in transferring ownership and crediting interest payments. Any such problems could drive investors from the municipal market with a concurrent increase in borrowing costs for units of government.

For the reasons above stated, I believe that implementation of TEFRA prior to a determination of its applicability to State and local debt issuances would be unjust in that borrowing costs will be substantially increased and certain marketing structures and practices will be modified with possible long-term negative impacts on the State of North Carolina and its political subdivisions. It is for these reasons that I believe the implementation of TEFRA must be stayed pending a final decision on the legality of this legislation.

Dated this the 29th day of April, 1983.

Harlan E. Boyles
State Treasurer

Subscribed and sworn to before me this

29th day of April, 1983.

Notary Public

Faye N. Smith

My Commission Expires 11/3/87

No. 94, Original

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

State of South Carolina,

Plaintiff,

vs.

Donald T. Regan, Secretary of the Treasury of the United States of America,

Defendant.

AFFIDAVIT OF LOUIS L. GOLDSTEIN,
COMPTROLLER OF THE STATE OF MARYLAND

State of Maryland
Anne Arundel County

Personally appeared before me, Louis L. Goldstein, who being duly sworn, states:

1. That he is the duly elected, qualified and acting Comptroller of the State of Maryland, whose duties include general superintendence of the fiscal affairs of the State and service, along with the Governor and State Treasurer, on the Board of Public Works, the body that issues the general obligation debt of the State.

2. That Maryland has joined with the State of Texas, and other states, as Amicus Curiae in this action.

3. That the State of Maryland plans to issue approximately $220 million of general obligation bonds within the 12 month period after July 1, 1983, the effective date of the provisions of Section 310(b)(1) of Public Law 97-248, the Tax Equity and Fiscal Responsibility Act of 1982 ("the Act"), which provisions require that State obligations must be issued in fully registered form in order that the interest paid thereon by the State to its lenders remain exempt from federal income taxation.

4. That the proposed $220 million of issues include obligations incurred in order to finance such necessary and vital public projects as schools, colleges, roads, prisons and other general capital construction projects.

5. That in order to comply with the registration requirement of Section 310(b)(1) of the Act, the State of Maryland will have to incur additional initial costs, including registrar's fees, which will be substantially above the costs of issuance if those bonds were issued in coupon form.

6. That while the exact amount of increased cost is unknown at present, because bids will not be received from potential providers of such registration service until approximately three (3) weeks from this date, estimates have been prepared by the employees of State government responsible for same.

7. That, owing to the registration requirement of the Act, these additional costs during the year of issuance for the proposed issues of approximately $220 million will exceed $368,000; if, however, the issue(s) were in coupon form, the same cost would be drastically reduced to approximately $148,000.

8. That it is expected that the State's earnings on the money set aside to pay the interest on said bonds according to the terms of the issues will be reduced, through changes in methods of payment caused by registration, from approximately $600,000 earned during the fiscal year ending June 30, 1982, to $50,000 a year or less for each year such registered issues are outstanding.

9. That these enormous additional initial costs incurred due to the registration requirement of the Act will result in immediate harm to the State of Maryland in that it will be required to reduce other state general fund expenditures in order to pay such costs.

10. That, additionally, in complying with the registration requirement of the Act, the State of Maryland will have to pay increased costs, which costs will continue through the life of the issue, in registrar's and transfer agent's fees; that, with respect to the proposed issues totaling $220 million, these increased costs will be approximately $64,000 annually, with such costs increasing over the life of the issue.

11. That but for the registration requirement of the Act, Maryland would issue the proposed bonds in coupon form, at an interest rate estimated to be 50 basis points lower than the rate Maryland must pay its lenders on the same bonds in registered form.

12. That even more significant than the increased costs resulting from compliance with the registration requirement of Section 310(b)(1) of the Act, is the fact that this requirement will immediately harm the sovereignty of the State of Maryland by altering and restricting the manner in which it issues debt, and the timing, size and potential return from said debt, and by abridging its vital sovereign power to borrow money on terms and conditions of its own choosing, which power is reserved to Maryland by the United States Constitution, and by violating the constitutional doctrine which is central to federalism that neither sovereign may tax the other; and that irrespective of the final decision of the United States Supreme Court herein, the violation of Maryland's sovereignty for any period of time

is intolerable to the federal system and will therefore cause irreparable harm to Maryland as a sovereign State.

Further saith the deponent not.

LOUIS L. GOLDSTEIN, COMPTROLLER

On May 2nd, 1983, Louis L. Goldstein personally appeared before me and swore that the matters set forth in this Affidavit were true to the best of his knowledge, information and belief.

Notary Public
Anne Arundel County, Maryland

No. 84, Original

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

State of South Carolina,

Plaintiff,

vs.

Donald T. Regan, Secretary of the Treasury of the United States of America,

Defendant.

AFFIDAVIT OF WILLIAM S. JAMES,
TREASURER OF THE STATE OF MARYLAND

State of Maryland
Anne Arundel County

Personally appeared before me, William S. James, who being duly sworn, states:

1. That he is the duly appointed and acting Treasurer of the State of Maryland, whose duties include service, along with the Governor and State Comptroller, on the Board of Public Works, the body that issues the general obligation debt of the State, and that he, as Treasurer, acts as agent of said Board in the general supervision of the issuance of said debt and its maintenance and payment.

2. That Maryland has joined with the State of Texas, and other states, as Amicus Curiae in this action.

3. That the State of Maryland plans to issue approximately $220 million of general obligation bonds within the 12 month period after July 1, 1983, the effective date of the provisions of Section 310(b)(1) of Public Law 97-248, the Tax Equity and Fiscal Responsibility Act of 1982 ("the Act"), which provisions require that State obligations must be issued in fully registered form in order that the interest paid thereon by the State to its lenders remain exempt from federal income taxation.

4. That the proposed $220 million of issues include obligations incurred in order to finance such necessary and vital public projects as schools, colleges, roads, prisons and other general capital construction projects.

5. That in order to comply with the registration requirement of Section 310(b)(1) of the Act, the State of Maryland will have to incur additional initial costs, including registrar's fees, which will be substantially above the costs of issuance if those bonds were issued in coupon form.

6. That while the exact amount of increased cost is unknown at present, because bids will not be received from potential providers of such registration service until approximately three (3) weeks from this date, estimates have been prepared by the employees of State government responsible for same.

7. That, owing to the registration requirement of the Act, these additional costs during the year of issuance for the proposed issues of approximately $220 million will exceed $368,000; if, however, the issue(s) were in coupon form, the same cost would be drastically reduced to approximately $148,000.

8. That it is expected that the State's earnings on the money set aside to pay the interest on said bonds according to the terms of the issues will be reduced, through changes in methods of payment caused by registration, from approximately $600,000 earned during the fiscal year ending June 30, 1982, to $50,000 a year or less for each year the issues are outstanding.

9. That these enormous additional initial costs incurred due to the registration requirement of the Act will result in immediate harm to the State of Maryland in that it will be required to reduce other state general fund expenditures in order to pay such costs.

10. That, additionally, in complying with the registration requirement of the Act, the State of Maryland will have to pay increased costs, which costs will continue through the life of the issue, in registrar's and transfer agent's fees; that, with respect to the proposed issues totaling $220 million, these increased costs will be approximately $64,000 annually, with such costs increasing over the life of the issue.

11. That but for the registration requirement of the Act, Maryland would issue the proposed bonds in coupon form, at an interest rate estimated to be 50 basis points lower than the rate Maryland must pay its lenders on the same bonds in registered form.

12. That even more significant than the increased costs resulting from compliance with the registration requirement of Section 310(b)(1) of the Act, is the fact that this requirement will immediately harm the sovereignty of the State of Maryland by altering and restricting the manner in which it issues debt, and the timing, size and potential return from said debt, and by abridging its vital sovereign power to borrow money on terms and conditions of its own choosing, which power is reserved to Maryland by the United States Constitution, and by violating the constitutional doctrine which is central to federalism that neither sovereign may tax the other; and that irrespective of the final decision of the United States Supreme Court herein, the violation of Maryland's sovereignty for any period of time

is intolerable to the federal system and will therefore cause irreparable harm to Maryland as a sovereign State.

Further saith the deponent not.

WILLIAM S. JAMES, TREASURER

On May 2nd, 1983, William S. James personally appeared before me and swore that the matters set forth in this Affidavit were true to the best of his knowledge, information and belief.

Notary Public
Anne Arundel County, Maryland

No. 94, Original

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1982

State of South Carolina,

Plaintiff,

vs.

Donald T. Regan
Secretary of the Treasury
United States of America

Defendant.

AFFIDAVIT OF WILLIAM M. NIXON

State of Georgia
County of Fulton

Personally appeared before me, William M. Nixon, who being duly sworn, states;

1. That he is the duly qualified and acting State Auditor of the State of Georgia, who by virtue of this position, under Georgia Law, is Secretary-Treasurer of the Georgia State Financing and Investment Commission. The Georgia State Financing and Investment Commission is the Constitutionally created Commission that is charged with issuing all General Obligation Bond Debt of the State of Georgia. The Secretary-Treasurer of the Commission is charged with the responsibility of calling the date of General Obligation Bond Sales and preparing Official Statements, bid forms, etc. incident to the sale of such bonds.

2. That the State of Georgia plans to issue $127,125,000.00 of General Obligation Bonds and that these bonds will be level funded over

a five year period. These bonds will be issued within the next three months and will be dated on or after July 1, 1983, the effective date of the provisions of Section 310 (b) (1) of Public Law 97-248, the Tax Equity and Fiscal Responsibility Act of 1982 ("the Act") which provisions require that State obligations must be issued in fully registered form in order that the interest paid thereon by the State to its lenders remain exempt from federal income taxation.

3. That the proposed $127,125,000.00 issue includes obligations incurred in order to finance: the construction and equipping of buildings and facilities under the control of the State Board of Regents of the University System, a school construction program throughout the State of Georgia, the expansion of facilities at the Georgia Ports Authority, equipping of the Georgia World Congress Center, constructing and equipping a Regional Youth Development Center, constructing and equipping the Georgia Public Safety Training Academy and the acquisition and clearing land for the deposit of spoilage in connection with harbor maintenance.

4. That in order to comply with the registration requirement of Section 310 (b) (1) of the Act, the State of Georgia will have to incur increased costs, which costs will continue through the life of the issue in registrar's and transfer agents fees; that with respect to the proposed $127,125,000.00 issue, these increased costs will be $176,200.00.

5. That but for the registration requirement of the Act, Georgia would issue the proposed bonds in coupon form at an interest rate 25 to 30 basis points lower than the rate Georgia must pay its lenders on the same bonds in registered form.

6. That in calculating the difference of 25 basis points for the proposed issue (a net interest cost of 6.25% versus 6.50%) results in a net interest increase of $1,030,288.00 over the life of the proposed issue.

7. That these enormous additional costs due to the registration requirement of the Act will result in immediate harm to the State of Georgia in that it will be required to fund these additional costs over the life of the proposed issue and such costs must be borne by the taxpayers of the State of Georgia.

8. That even more significant than the increased costs resulting from compliance with the registration requirement of Section 310 (b) (1) of the Act, is the fact that this requirement will immediately harm the sovereignty of the State of Georgia by abridging its vital sovereign power to borrow money, which power is reserved to Georgia by the United States Constitution, and by violating the constitutional doctrine which is central to federalism that neither sovereign may tax the other; and that irrespective of the final decision of the United States Supreme Court herein, the violation of Georgia's sovereignty for any period of time is intolerable to the federal system and will cause irreparable harm to the State of Georgia as a sovereign.

FURTHER saith the deponent not.

William M. Dixon
WILLIAM M. DIXON

SWORN to and subscribed before me this 3rd day of May, 1983.

Deana Robinson
Notary Public
State of Georgia

My Commission Expires: February 4, 1985

No. 94, Original

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

State of South Carolina,

Plaintiff,

vs.

Donald T. Regan, Secretary of the Treasury of the United States of America,

Defendant.

AFFIDAVIT OF ANTHONY J. SOLOMON

State of Rhode Island)
)
County of Providence)

Personally appeared before me, Anthony J. Solomon, who being duly sworn, states:

1. That he is the duly elected, qualified Treasurer of the State of Rhode Island, whose duties include borrowing and issuance of all state obligations and complete record of all state obligations.

2. That the State of Rhode Island plans to issue approximately $50 million of Capital Improvement Bonds within the next twelve months and after July 1, 1983, the effective date of the provisions of Section 310(b)(1) of Public Law 97-248, the Tax Equity and Fiscal Responsibility Act of 1982 ("the Act"), which provisions require that State obligations must be issued in fully registered form in order that the interest paid thereon by the State to its lenders remain exempt from federal income taxation.

3. That the proposed $50 million issue includes obligations incurred in order to finance various capital improvements.

4. That in order to comply with the registration requirement of Section 310(b)(1) of the Act, the State of Rhode Island will have to incur additional initial costs, including registrar's fees, which will be substantially above the costs of issuance if those bonds were issued in coupon form.

5. That owing to the registration requirement of the Act, these additional costs for the proposed $50 million issue will exceed $95,000.00; if, however, the issue were in coupon form, the same costs would be drastically reduced to approximately $44,750.00.

6. That these enormous additional initial costs incurred due to the registration requirement of the Act will result in immediate harm to the State of Rhode Island.

7. That, additionally, in complying with the registration requirement of the Act, the State of Rhode Island will have to pay increased costs, which costs will continue through the life of the issue, in registrar's and transfer agent's fees; that, with respect to the proposed $50 million issue, these increased costs will be approximately $50,000.00.

8. That but for the registration requirement of the Act, Rhode Island would issue the proposed bonds in coupon form, at an interest rate 30 to 40 basis points lower than the rate Rhode Island must pay its lenders on the same bonds in registered form.

9. That even more significant than the increased costs resulting from compliance with the registration requirement of Section 310(b)(1) of the Act, is the fact that this requirement will immediately harm the sovereignty of the State of Rhode Island by abridging its vital sovereign power to borrow money, which power is reserved to Rhode Island by the United States Constitution, and by violating the constitutional doctrine which is central to

federalism that neither sovereign may tax the other; and that irrespective of the final decision of the United States Supreme Court herein, the violation of Rhode Island's sovereignty for any period of time is intolerable to the federal system and will therefore cause irreparable harm to the Rhode Island as a sovereign.

FURTHER saith the deponent not.

ANTHONY J. SOLOMON

SWORN to and subscribed
before me this 6th day
of May, 1983.

NOTARY PUBLIC OF RHODE ISLAND (L.S.)
My Commission Expires: June 1986

No. 94, Original

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

State of South Carolina,

Plaintiff,

vs.

Donald T. Regan, Secretary of the Treasury of the United States of America,

Defendant.

AFFIDAVIT OF ROBERT W. FLANDERS

State of New Hampshire
County of Merrimack

Personally appeared before me, Robert W. Flanders who being duly sworn, states:

1. That he is the duly elected, qualified and acting Treasurer of the State of New Hampshire, whose duties include the issuance of all state debt.

2. That the State of New Hampshire plans to issue approximately fifty-two (52) million of general obligation bonds within the next four (4) months and after July 1, 1983, the effective date of the provisions of Section 310(b) (1) of Public Law 97-248, the Tax Equity and Fiscal Responsibility Act of 1982 ("the Act"), which provisions require that State obligations must be issued in

fully registered form in order that the interest paid thereon by the State to its lenders remain exempt from federal income taxation.

3. That the proposed fifty-two (52) million issue includes obligations incurred in order to finance capital improvements in various departments, capital improvements at the University of New Hampshire, highway improvements, acquisition of rail properties and construction of regional vocational education centers.

4. That in order to comply with the registration requirement of Section 310(b)(1) of the Act, the State of New Hampshire will have to incur additional initial costs, including registrar's fees, which will be substantially above the costs of issuance if those bonds were issued in coupon form.

5. That owing to the registration requirement of the Act, these additional costs for the proposed fifty-two(52) million issue will exceed $10,000.00.

6. That these enormous additional initial costs incurred due to the registration requirement of the Act will result in immediate harm to the State of New Hampshire in that it will be required to increase expenditures and cause a greater deficit or to adjust downward its appropriations and expenditures in other areas.

7. That, additionally, in complying with the registration requirement of the Act, the State of New Hampshire will have to pay increased costs, which costs will continue through the life of the issue, in registrar's and transfer agent's fees; that, with respect to the proposed fifty-two (52) million issue, these increased costs will be approximately $100,000.00.

8. That but for the registration requirement of the Act, New Hampshire would issue the proposed bonds in coupon form, at an interest rate 25 to 50 basis points lower than the rate New Hampshire must pay its lenders on the same bonds in registered form.

9. That even more significant than the increased costs resulting from compliance with the registration requirement of Section 310(b)(1) of the Act, is the fact that this requirement will immediately harm the sovereignty of the State of New Hampshire by abridging its vital sovereign power to borrow money, which power is reserved to New Hampshire by the United States Constitution, and by violating the constitutional doctrine which is central to federalism that neither sovereign may tax the other; and that irrespective of the final decision of the United States Supreme Court herein, the violation of New Hampshire's sovereignty for any period of time is intolerable to the federal system and will therefore cause irreparable harm to New Hampshire as a sovereign.

FURTHER saith the deponent not.

Robert W. Flanders
ROBERT W. FLANDERS

THE STATE OF NEW HAMPSHIRE
Merrimack County SS.

May 6, A.D.1983

the above ROBERT W. FLANDERS personally appeared and made oath that the above statement by him/~~her~~ subscribed is, in his/~~her~~ belief, true.

Before me Martha M. Custer
~~Justice of Peace~~
Notary Public

MARTHA M. CUSTER, Notary Public
My Commission Expires June 30, 1988

NO. 94, Original

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

State of South Carolina,

Plaintiff,

vs.

Donald T. Regan, Secretary of the Treasury of the United States of America,

Defendant.

AFFIDAVIT OF C. W. HOUSER

State of Texas *
*
County of Travis *

Before us, the undersigned Notary Public, and the Senior Cashier of First City National Bank of Austin (hereinafter, the Bank), on this day personally appeared C. W. Houser, known to us, and after being duly sworn on his oath deposed and said:

1. I am Senior Vice President of First City National Bank of Austin and have been actively involved in municipal bond procedures for banks in Texas for 38 years. The Bank is one of 61 banks in Texas which together comprise First City BAN Corp., a bank holding company, all of said banks being involved actively in the processing of municipal bonds issued in the State of Texas.

2. The Bank is the third largest bank in Austin with assets of $610,000,000. The Bank serves as paying agent for 362 issuers of municipal bonds.

3. In order to comply with the provision of law that all municipal bonds be issued in registered form for the interest thereon to remain tax-exempt, the Bank must install a computer hardware system costing $123,000. Additionally, the Bank must hire two more employees to process the registrations. The Bank has estimated the cost of initial compliance with registration requirements to be approximately $130,000.

4. This cost will be passed on to the issuers of municipal bonds, along with additional fees sufficient to make a profit, in the form of the Bank's fee as registrar to the issuer.

5. Based on my experience in the field of municipal bonds, I estimate that the costs of issuance of bonds will rise between 25% and 50% for the average issuer where the Bank is utilized as registrar.

6. Those issuers of bonds which will be hardest hit by the registration requirement will be the smaller issuers that traditionally have used local banks as paying agents. Those smaller issuers will now have to utilize larger, possibly non-local, banks with the computer capacity to deal with bond registration and will pay correspondingly higher fees for that capacity.

7. The Bank is one of 61 banks comprising one bank holding company in the State of Texas. There are 25 major bank holding companies in Texas (made up of many more individual banks), as

well as certain smaller bank holding companies and a few non-affiliated banks large enough to undergo the necessary expense to comply with registration requirements. Based on my experience in the banking industry's role in the issuance of municipal bonds, I think it reasonable to assume that the added costs to each of those banks will be passed along to issuers of bonds in the form of registrar fees charged by the banks, resulting in substantially greater costs of issuance to those issuers.

Further deponent saith not.

Attest: Senior Cashier

C. W. Houser
Senior Vice President

(SEAL)

Sworn to and subscribed before me this 22 day of April, 1983.

Notary Public in and for Travis County, The State of Texas

My commission expires:

(SEAL)

No. 94, Original

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

State of South Carolina,

Plaintiff,

vs.

Donald T. Regan, Secretary of the Treasury of the United States of America,

Defendant.

MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

On February 9, 1983, the plaintiff herein, the State of South Carolina, filed its Motion for Leave to File Complaint, its Complaint with attached exhibits and its supporting Brief asking the Court to exercise original jurisdiction in order to determine whether or not Section 310(b)(1) of Public Law 97-248, the "Tax Equity and Fiscal Responsibility Act of 1982" (the "Act"), violates the United States Constitution in that it abridges South Carolina's power to borrow money and erodes South Carolina's immunity as a sovereign from federal taxation. The provisions of Section 310(b)(1) of the Act are effective as of July 1, 1983, upon which date all State obligations are required to be issued in registered form in order for the interest paid thereon to retain its immunity from federal income taxation. The defendant's response to South Carolina's motion was originally due on or before April 11, 1983, but on April 7, 1983, the United States Solicitor General requested and received an extension to respond until May 11, 1983.

Since the filing of the motion on February 9, 1983, events have occurred which make it imperative that the Court temporarily enjoin the enforcement of the challenged provision. First, as July 1, 1983, approaches, it appears increasingly unlikely that the Court will be able to pass

upon South Carolina's motion and consider and decide the question raised in the complaint before the registration requirement is scheduled to go into effect. Second, South Carolina has now been joined by an additional twenty-four States of the United States in its request to the Court that original jurisdiction be exercised and that Section 310(b)(1) of the Act be declared unconstitutional. See, Amicus Curiae Brief of Texas, Alaska, Arizona, Georgia, Indiana, Iowa, Louisiana, Maryland, Mississippi, Missouri, Montana, Nevada, New Hampshire, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Virginia, Vermont, Wisconsin and Wyoming filed May 5, 1983. The fact that fully one-half of the sovereign States of the United States are urging the Court to hear the matter manifests the significance of the challenge. The urgency of the challenge is illustrated by the affidavits attached both to the complaint and to the amicus curiae brief which detail the adverse financial effect which the challenged provision will have. Moreover, as the representative affidavits attached hereto reflect, South Carolina and many other States have now determined that State obligations need to be issued in the next several months and after July 1, 1983, a fact which compounds the immediacy of the controversy and the necessity of preserving the status quo until the Court is able to consider and decide the merits of the controversy. Finally, South Carolina submits that as July 1, 1983, draws nearer without a resolution of the fundamental constitutional question which it has raised by its challenge to Section 310(b)(1) of the Act, the loss of one of the cornerstones of its sovereignty becomes less a threat and more a reality.

While a preliminary injunction is extraordinary relief which is not granted except in cases clearly warranting it [see, e.g., Connecticut v. Massachusetts, 282 U.S. 660 (1931)], the Court has declared that:

> Where the questions presented by an application for an interlocutory injunction are grave, and the injury to the moving party will be certain and irreparable if the application be denied and the final decree be in his favor, while if the injunction be granted the injury to the opposing party, even if the final decree be in his favor, will be inconsiderable,..., the injunction usually will be granted.... Ohio Oil Company v. Conway, 279 U.S. 813 (1929).

That the questions raised by South Carolina's motion for a preliminary injunction are grave cannot be denied. The registration requirement imposed on State obligations by the challenged provision and enforced by the taxability of interest on those obligations if they are not registered will overturn precedents established over one hundred and fifty years ago [see, e.g., Weston v. The City Council of Charleston, 27 U.S. (2 Pet.) 481 (1829)] and will intrude on South Carolina's sovereign borrowing power, a power guaranteed by the United States Constitution, particularly by the Tenth Amendment thereto. Cf., National League of Cities v. Usery, 426 U.S. 833 (1976).

Furthermore, as manifested by the affidavits attached hereto, the injury to South Carolina will be certain and irreparable if the challenged provision is not temporarily enjoined. Apart from the enormously increased costs which will be incurred if the bonds which South Carolina and all other States intend to issue must be in registered form, the injury to State sovereignty is even more significant. To permit the enforcement of the challenged provision for even one day, or in even one instance, would undermine the solemn and basic relationship between State and national governments which the founders of this nation established by means of the United States Constitution. The damage which will result to South Carolina as a sovereign, to all other States as sovereigns and to the federal system itself by the implementation of Section 310(b)(1) of the Act is unascertainable and, accordingly, irremediable. Cf., Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952).

Finally, South Carolina's likelihood of prevailing on the merits is almost certain in view of the clear, continuing and centuries-old precedents more fully set forth in South Carolina's supporting brief included with its motion herein. See, Motion for Leave to File Complaint, Complaint and Supporting Brief at 44-65.

On the other hand, the defendant's injury, even were he to prevail on the merits, will indeed be inconsiderable, if not totally speculative, if the preliminary injunction is granted. Whatever administrative inconvenience or loss of federal revenues might result if the Court enjoins the implementation of the registration requirement is insignificant, in any balancing of equities, when the integrity of the federal system rests in the balance. Only the preservation of the status quo by means of preliminiary injunctive relief will protect the integrity of the federal system.

South Carolina contends that when it issues its State general obligation bonds, whose proceeds will be expended for schools, penitentiaries, State-run hospitals, universities or highways, it is exercising an essential or core State function. The taxability or non-taxability of many types of bonds issued by the States or their political units may rest upon the will or grace of Congress - but not so here. If the federal system is to be preserved as originally established, South Carolina submits that the Court must uphold its sovereign right to issue general obligation bonds for essential State functions without interference from the national government.

For the foregoing reasons as well as for those contained in the affidavits attached hereto and in the supporting brief included with the original motion herein, the plaintiff respectfully submits that temporary relief is as important as final success here and urges the Court to

issue a preliminary injunction against the implementation and enforcement of Section 210(b)(1) of the Tax Equity and Fiscal Responsibility Act of 1982.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, KAREN LeCRAFT HENDERSON, counsel of record for the plaintiff and a member of the Bar of the Court, do hereby certify that, in accordance with Rule 28.4(a), three (3) copies of the Motion for Preliminary Injunction, Affidavits and Supporting Brief were served on all parties required to be served on this date by depositing same in the United States mail, first-class postage prepaid, and addressed as follows: The Solicitor General of the United States, Department of Justice, Washington, D.C. 20530 and The Honorable Donald T. Regan, Secretary of the United States Treasury, Department of the Treasury, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220.

This 9th day of May, 1983.

Karen LeCraft Henderson

KAREN LeCRAFT HENDERSON

Post Office Box 11458
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